

# **Highway Public-Private Partnerships**

## **Securing Public Benefits and Protecting the Public Interest**

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**Presentation before the North Carolina  
Legislative Study Commission on Public-  
Private Partnerships**

**Steve Cohen**  
**U.S. Government Accountability Office**

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# About GAO

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- Commonly called the “investigative arm of Congress” or the “congressional watchdog,” GAO examines how taxpayer dollars are spent and recommends ways to make government work better
- GAO’s mission is to help Congress improve the performance and accountability of the federal government
- Most GAO assignments are conducted at the request of congressional committees or are mandated by public laws and committee reports

# What Are Public-Private Partnerships?

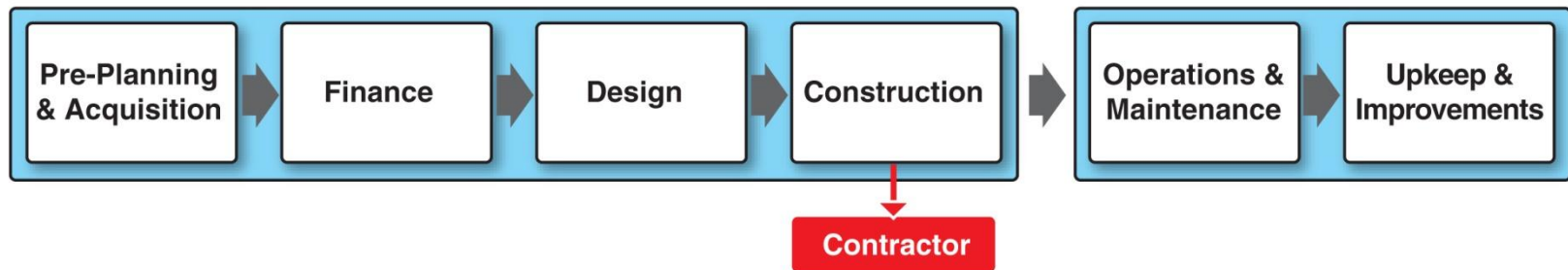
“Contractual agreements formed between a public agency and a private sector entity that allow for greater private sector participation in the delivery and financing of transportation projects...”

U.S. Department of Transportation  
<http://www.fhwa.dot.gov/ppp>

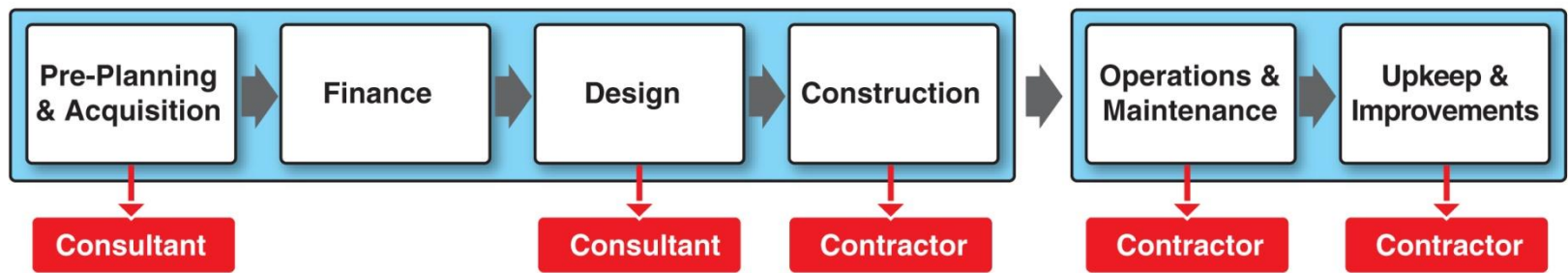
“...any scenario under which the private sector would be more of a partner than they are under the traditional method of procurement....”

U.S. Department of Transportation  
Report To Congress On Public-Private Partnerships  
December 2004

# Traditional Procurement Model (Construction Outsourced to Private Sector)

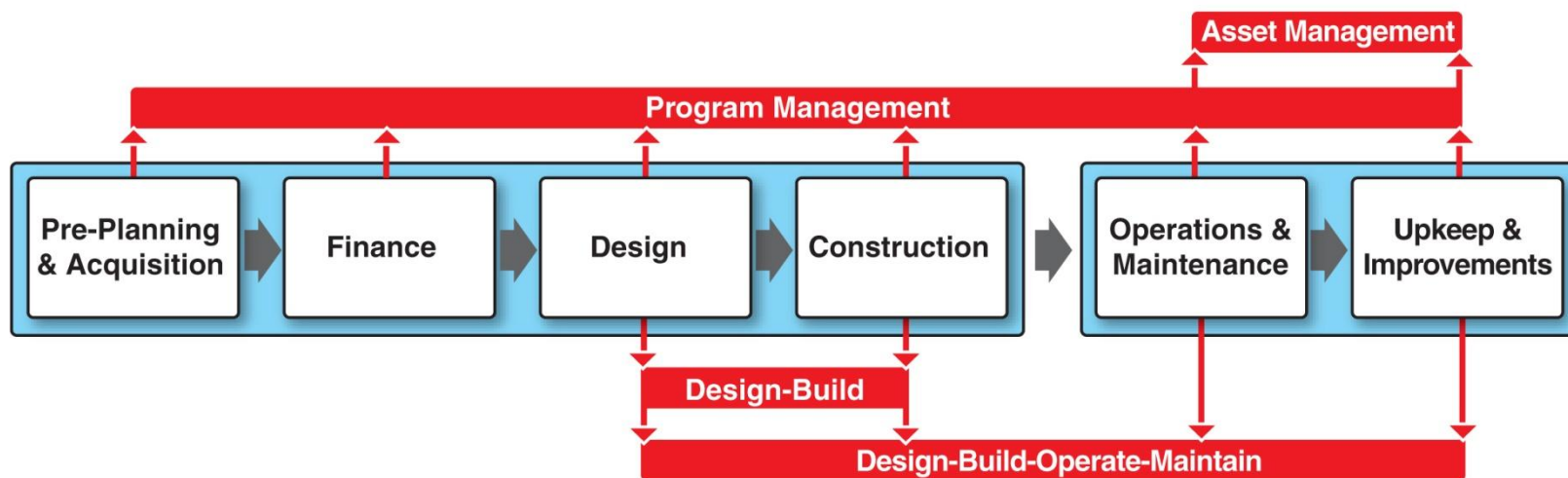


# Growth in Outsourcing



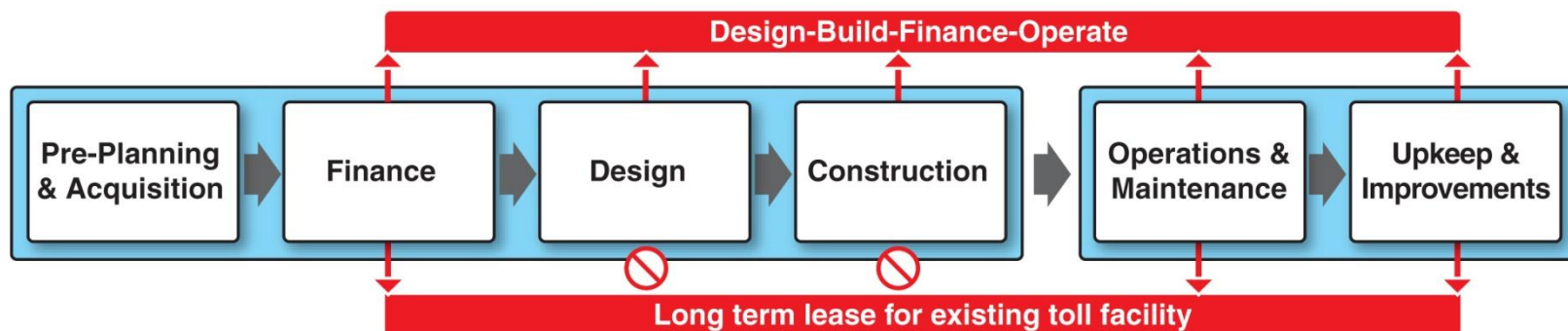
# Public-Private Partnerships

## Broader Scope of Contracting

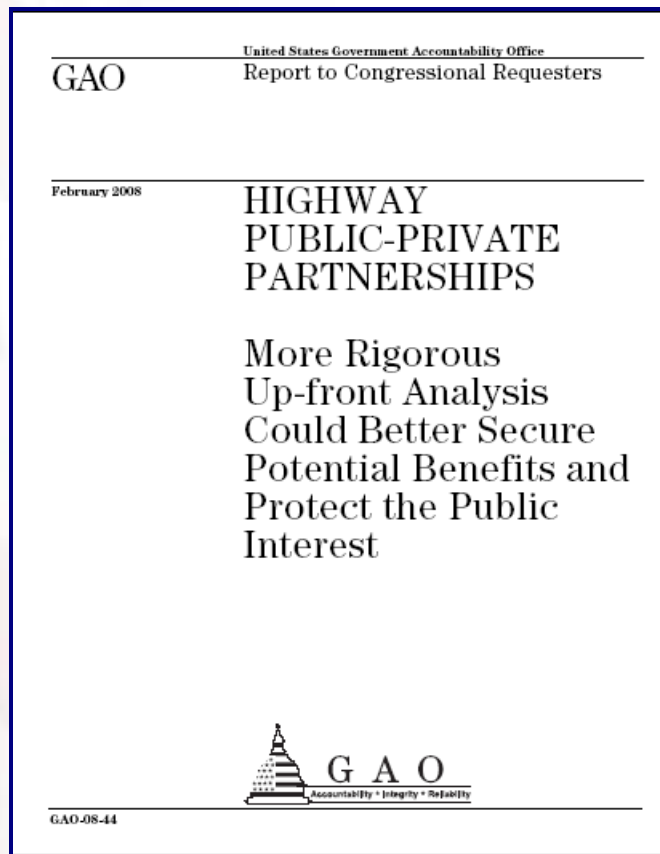


# Public-Private Partnerships

## Private Equity Investment Model



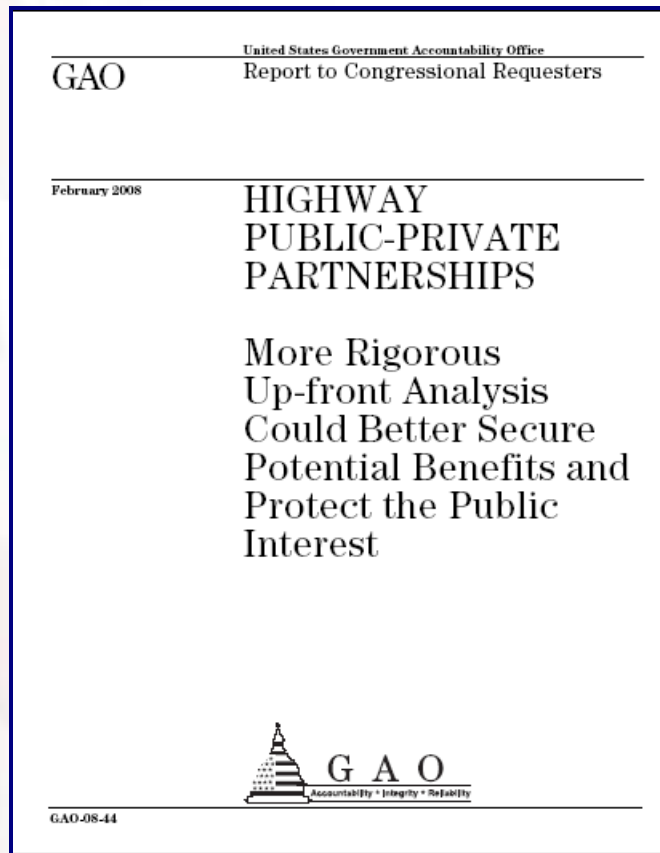
# GAO Report on Highway Public-Private Partnerships - Scope



- Public sector enters into a contract, lease, or concession agreement with private sector firm(s) to design, construct, operate, and/or maintain a highway facility--often in exchange for an up-front “concession payment”--usually for an extended period of time, and where private partner receives toll revenues over the life of the agreement.
- Did not evaluate numerous other types of public-private partnership arrangements. This work cannot be extrapolated to other types of public-private partnerships

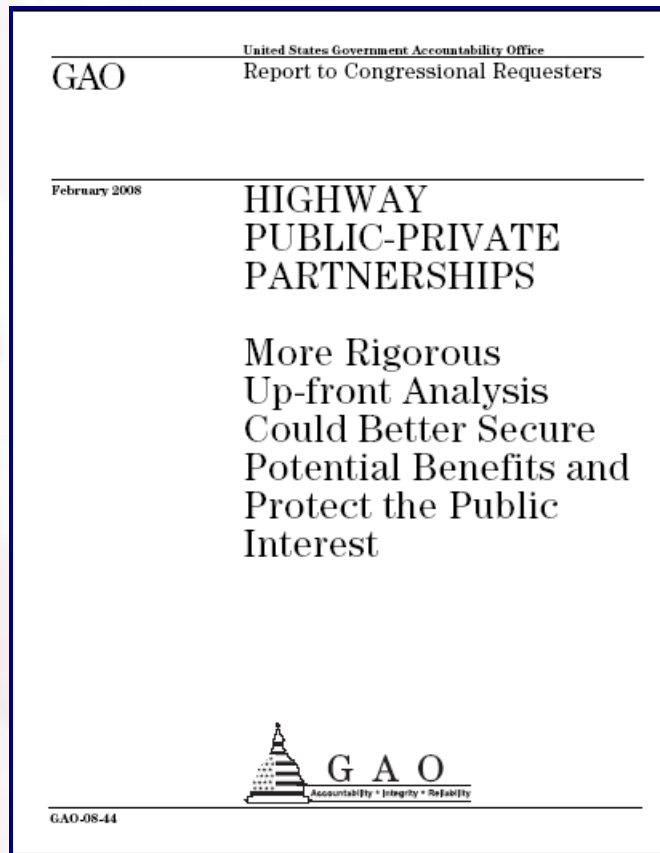


# GAO Report on Highway Public-Private Partnerships - Methodology



- Public-Private Partnership projects:
  - Texas
  - Oregon
  - Chicago Skyway
  - Indiana Toll Road
  - Toronto 407 ETR
- Review of overseas experiences
  - Spain
  - Australia
  - UK
  - Canada
- Document review and interviews
  - U.S. DOT and state project sponsors
  - Private sector concessionaires and investors
  - Concession agreement and contracts
  - Financial and legal consultants
  - Market and industry analysts

# GAO Report on Highway Public-Private Partnerships – Key Questions



- What are the advantages, benefits, costs, and trade-offs?
- How have public officials acted to protect the public interest?
- What is the federal role/current federal policy environment?

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United States Government Accountability Office  
Report to Congressional Requesters

February 2008

## HIGHWAY PUBLIC-PRIVATE PARTNERSHIPS

More Rigorous  
Up-front Analysis  
Could Better Secure  
Potential Benefits and  
Protect the Public  
Interest



GAO-08-44

- What are the advantages, benefits, costs, and trade-offs?

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# Advantages and Potential Benefits

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- Finance construction of new facilities while minimizing the use of public funding
  - Transfer to and share project risks with the private sector
  - Improve life cycle management and investment decision-making
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## *Advantages and Potential Benefits*

### **Finance construction of new facilities while minimizing the use of public funding**

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- Conserve funding from highway capital improvement programs for other projects
  - Avoid the up-front costs of borrowing needed to bridge the gap until toll collections became sufficient to pay for the cost of building the roads and paying the interest on the borrowed funds
  - Avoid legislative or administrative limits that govern the amount of outstanding debt states are allowed to have.
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## *Advantages and Potential Benefits*

# **Transfer to and share project risks with the private sector**

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- More reliable and accurate estimates of costs, revenues, and risks including
  - construction costs
  - schedules
  - levels of traffic and revenues
  - life cycle costs

## *Advantages and Potential Benefits*

### **Improved life cycle management and investment decision-making**

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- More predictable funding for maintenance and capital repairs
  - *Contractual provisions versus annual budgetary and appropriations cycles*
- Lower life cycle costs overall
- More rational investment decisions (expansion, capital improvements)

# Costs and Trade-Offs

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- There is no “free” money
- Potential loss of public control
- Short term versus long-term benefits



## *Costs and Trade-Offs*

# **There is no “free” money**

- Public-private partnerships are a form of borrowing
  - *New financing, not new funding*
- Higher tolls
  - *Regular and sustained toll increases*
- Higher procurement and financing costs

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*Costs and Trade-Offs*

# Potential loss of public control

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- Setting toll rates
- Improving “competing” public facilities (Non-compete clauses)

## ***Costs and Trade-Offs***

### **Short term versus long-term benefits**

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- Intergenerational equity concerns
- Use of proceeds
- Future revenue stream: Does the public give up more than it gains?

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- How have public officials acted to protect the public interest?

# How Public Officials Have Identified And Acted To Protect The Public Interest

## Concession Terms

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- Asset performance measures
  - operating and maintenance standards
  - expansion triggers
- Financial mechanisms
  - toll rate limitations
  - revenue sharing
- Accountability and Flexibility
  - oversight and monitoring
  - more flexible “non-compete” provisions

# How Public Officials Have Identified And Acted To Protect The Public Interest

## Assessment tools

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- Governments in other countries have developed systematic approaches to identifying and evaluating the public interest before agreements are entered into
    - Australia
    - UK
    - British Columbia, Canada
  - Qualitative and quantitative public interest tests and criteria
    - Public interest tests
    - Public sector comparators/Value for money analyses
  - Use of such tools in the U.S. have been more limited
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- What is the federal role and current federal policy environment?

## *Federal Role and Policy Environment*

# **The Federal Role**

- Direct federal involvement has been limited and is generally determined by whether or not federal funds were or will be used.
- U.S. DOT has actively encouraged and promoted public-private partnerships
  - use of administrative flexibility (e.g. SEP-15)
  - model legislation
  - public-private partnerships website
  - Office of Innovative Program Delivery/Tolling & Pricing Team
- National interests in highway public-private partnerships have yet to be identified
- While U.S. DOT has done much to promote benefits, it has done comparatively little to assist states in weighing potential costs and trade-offs



*Federal Role and Policy Environment*

# **National Surface Transportation Policy and Revenue Study Commission**

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- For public-private partnerships on the Interstate Highway System:
  - use of public sector comparators to assess whether private sector financing provides better value for money than using public funds
  - capping the rate of toll increases to the CPI
  - revenue sharing
  - limits on how concession proceeds be used

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*Federal Role and Policy Environment*  
**House Transportation & Infrastructure Committee**  
(June 2009 Bipartisan Reauthorization Blueprint)

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- For public-private partnerships on the Federal-aid highway system
  - prohibit non compete provisions
  - analysis of toll impacts on interstate commerce
  - analysis of projected travel diversion
  - measures to mitigate impacts of tolls on low-income travelers
- Office of Public Benefit within DOT's Federal Highway Administration to review and approve state toll plans and oversee public-private partnership agreements

# GAO's Conclusions

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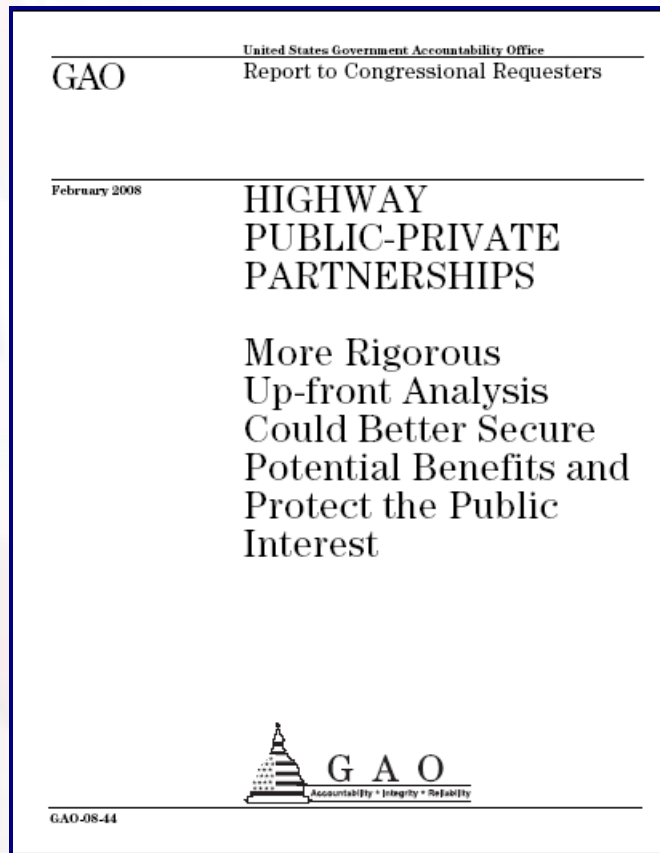
- Highway public-private partnerships show promise as a viable alternative, where appropriate, to help meet growing and costly transportation demands.
    - not a panacea -- costs and risks to the public and trade-offs must be made.
  - Benefits are *potential benefits*--they are not assured and can only be achieved by weighing them against potential costs and trade-offs through careful, comprehensive analysis.
  - Consideration of highway public-private partnerships in the U.S. could benefit from more consistent, rigorous, systematic, up-front analysis to determine whether they are appropriate in specific circumstances and, if so, how best to implement them.
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## GAO's Recommendations

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- Congress should direct U.S. DOT to develop objective criteria for identifying national interests in highway public-private partnerships
    - include any additional legal authority, guidance, or assessment tools that would be appropriately required
    - potential restrictions must be carefully crafted
    - provides an opportunity for the Department to play a targeted role in ensuring that national interests are considered and protected
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# Public-Private Partnerships in Highways



## Questions?

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[www.gao.gov](http://www.gao.gov)

<http://www.gao.gov/new.items/d0844.pdf>